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FUNDING LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DOUGLAS E. BELLOWS,

Plaintiff,

v.

MIDLAND CREDIT MANAGEMENT,
INC. AND MIDLAND FUNDING LLC,

Defendants.

Case No. 09 CV 1951 LAB WMC

**DEFENDANTS' OBJECTIONS TO
AND MOTION TO STRIKE
DECLARATION OF JOSHUA B.
SWIGART AND PLAINTIFF'S
EXHIBIT "C" - ORDER DISMISSING
ARBITRATION PROCEEDING**

Date: March 22, 2010

Time: 11:15 a.m.

Courtroom: 9

Judge: The Hon. Larry A. Burns

Trial: None Set

Defendants, Midland Credit Management, Inc. and Midland Funding LLC
(collectively "Midland"), respectfully submit the following objection to and motion to strike
the Declaration of Joshua B. Swigart and Plaintiff's Exhibit "C", the "Order Dismissing
Arbitration Proceeding":

A. The Declaration and Order Dismissing Arbitration Are Irrelevant.

The Swigart Declaration sets forth the purported facts of a JAMS arbitration
proceeding conducted between James Peak and HSBC and attaches an order dismissing that
arbitration proceeding (the "Order"). The Peak/HSBC Arbitration is irrelevant to the present
litigation and the Swigart Declaration proffers no reason that this Court should consider the

Order. Because the Order is irrelevant, it is therefore inadmissible. Both the Swigart Declaration and Order should be stricken.

B. Arbitration Awards Have No Precedential Value.

Mr. Swigart is apparently attaching the Order issued in the Peak matter to persuade this Court to treat the award as precedent and follow the ruling rendered by that arbitrator. However, as a matter of law, arbitration awards carry no precedential value since -- unless they are confirmed as judgments -- they are confidential and not suitable for citation. There is no evidence that the Order was judicially confirmed and therefore is of no precedential value.

Courts also decline to construe arbitration awards as precedent since an arbitrator need not follow the law when rendering a decision. *Cable Connection, Inc. v. Directv, Inc.* (2008) 44 Cal. 1334, 1354 [...“arbitrators, unless specifically required to act in conformity with rules of law, may base their decisions upon broad principles of justice and equity and in doing so may expressly or impliedly reject the claim that a party might successfully have asserted in a judicial action.”] See also, *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 11 [...“an arbitrator is not ordinarily constrained according to the rule of law...”].

Thus, Plaintiff’s reliance upon and citation to the Order is of no value, and this Court should strike the declaration of Mr. Swigart and decline to consider the Order.

Dated: March 15, 2010

KEENEY WAITE & STEVENS
A Professional Corporation

By: s/ Todd F. Stevens
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Attorneys for Defendants MIDLAND
CREDIT MANAGEMENT, INC. AND
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